

Eligibility Determination and Denial of Assistance

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1 Chapter Overview

This chapter outlines the U.S. Department of Housing and Urban Development's (HUD) eligibility requirements for participation in the Public Housing (PH) program and provides guidance to Public Housing Agencies (PHAs) in establishing additional criteria for admission. The Department advises PHAs to objectively and consistently apply these criteria when evaluating the eligibility of families who apply for assistance. An applicant must meet all eligibility requirements to receive housing assistance.¹ Applicants applying for assistance may be asked to explain their circumstances, furnish additional information and are entitled to receive an explanation in cases where the PHA determines the family is ineligible for admission.²

As with all areas of program administration, PHAs must comply with all federal, state and local laws, including but not limited to nondiscrimination laws, such as laws governing fair housing and equal opportunity in housing when determining eligibility.³

2 Overview of Eligibility Factors and Requirements at Admission

PHAs must consider three factors when determining a family's eligibility for admission into the PH program. In addition to the three eligibility factors, the PHA must conduct certain screenings which may result in denial of assistance. Each factor is summarized below and discussed further in a corresponding section. Before denying assistance for any criteria, the PHA should review Section 10, Denial of Assistance, to ensure compliance with all nondiscrimination and fair housing requirements, including for example, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and Violence Against Women Act (VAWA) requirements.

2.1 Eligibility Factors for Admission

Family eligibility requirements: The household must meet HUD's definition of a "family," which is provided in Section 3, Family Eligibility Requirements.⁴

Income limits: The household's annual income must not exceed the applicable income limit as established by HUD in the jurisdiction where the family leases a unit.⁵ This requirement applies at the time of admission and is reevaluated at the time of reexamination; Section 4, Income Limits, further describes this requirement.

Citizenship or Eligible Immigration status: Each applicant in the household must have citizenship or eligible immigration status with supporting documentation.⁶ Citizenship status only needs to be verified at the time of admission for each household member. Information on how to verify citizenship and eligible immigration

¹ 24 CFR § 960.201

² 24 CFR § 960.208(a)

³ 24 CFR § 5.105(a); 24 CFR part 1; 24 CFR part 8; 24 CFR part 100; 24 CFR part 146; 28 CFR part 35

⁴ 24 CFR § 5.403

⁵ 24 CFR § 960.202(a); <https://www.huduser.gov/portal/datasets/il.html>

⁶ 24 CFR § 5.508(a)-(d)

status and calculate assistance for families that include ineligible noncitizens is provided in Section 5, Citizenship Status.

2.2 Screening and Other Requirements at Admission

Disclosure of Social Security Numbers and compliance with verification requirements. In order to verify the family’s eligibility, the household must sign consent forms and provide requested verification materials.⁷ The applicant must also disclose and document the social security numbers (SSN) of all family members (with a few exceptions) as described in Section 6, Disclosure of Social Security Numbers. PHAs only need to verify SSNs once per household member.⁸

Background screening. The PHA is responsible for screening family behavior and suitability for tenancy.⁹ Details on which types of activity must result in denial of assistance and what types of activity may result in denial of assistance, and the PHA’s options for setting additional criteria are discussed in Section 7, Background Screening. PHAs must perform background checks for each member to see if they are subject to the lifetime sex offender registry.¹⁰ However, these background checks may be achieved by searching the Dru Sjodin National Sex Offender Database, available at <http://www.nsopw.gov>.¹¹ PHAs may obtain conviction records from Law Enforcement Agencies (LEAs) to screen for other criminal activity related to suitability for tenancy but are not required to do so.¹² If PHAs choose to screen for admission using LEA conviction records, all adult household members must sign a criminal background consent form to authorize the PHA to conduct these background screenings.¹³

Enterprise Income Verification (EIV) system searches. PHAs must use HUD’s EIV system to search for all household members using the Existing Tenant Search and all adult household members in the Search for Former Tenant. All adult household members also must sign the form HUD-52675.¹⁴ The PHA may be required to deny assistance to household members already receiving assistance from another program or who owe an outstanding debt to another PHA. More information on the required searches and interpreting the results is provided in Section 8, EIV System Searches at Admission.

3 Family Eligibility Requirements

Each applicant for assistance under the PH Program must, at a minimum meet the PHA’s definition of “family.” PHAs have discretion in defining what constitutes a family. However, the definition must not exclude any groups included under HUD’s definition of family.¹⁵ PHAs must ensure that its definition of “family” does not

⁷ 24 CFR §§ 5.230; 5.233

⁸ 24 CFR § 5.216(b)

⁹ 24 CFR 960.203

¹⁰ 24 CFR 5.856

¹¹ PIH 2012-28, State Registered Lifetime Sex Offenders in Federally Assisted Housing, page 3, FN 1, page 4

¹² See 24 CFR § 5.903

¹³ 24 CFR § 5.903(b)

¹⁴ 24 CFR § 5.233; Notice PIH 2018-18, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification System

¹⁵ 24 CFR § 5.403

consider actual or perceived sexual orientation, gender identity, or marital status.¹⁶ PHAs must not make inquiries as to the sexual orientation or gender identity of applicants.

A family includes, but is not limited to, regardless of actual or perceived sexual orientation, gender identity, or marital status, the following:

- 1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person;
- 2) A group of persons residing together, and such group includes, but is not limited to:
 - a) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family).
 - b) An elderly family, which is defined as a family whose head, co-head, spouse, or sole member is at least 62 years of age. It may include two or more persons, each of whom are at least 62, living together; or one or more persons who are at least 62 living with one or more live-in aides.
 - c) A near-elderly family, which is defined as a family whose head, co-head, spouse, or sole member is at least 50 years of age but below the age of 62; or two or more persons, each of whom are between the ages of 50 and 62, living together; or one or more persons who are between the ages of 50 and 62 living with one or more live-in aides.
 - d) A disabled family, which means a family whose head, co-head, spouse, or sole member, is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.
 - i) A “person with disabilities” means a person who:
 - (1) Has a disability as defined in 42 U.S.C. § 423(d)(1);
 - (2) Has a physical, mental or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of such a nature that ability to live independently could be improved by more suitable housing conditions; or
 - (3) Has a developmental disability as defined in 42 U.S.C. § 15002(8) (formerly codified in 42 U.S.C. § 6001).
 - ii) Important considerations:
 - (1) The meaning of “a person with disabilities” does not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the virus that causes AIDS.
 - (2) The meaning of “a person with disabilities” does not include a person whose disability is based solely on a dependency to any drug or alcohol (for eligibility purposes).
 - (3) A person who qualifies as a “person with disabilities” also qualifies as an individual with disabilities for purposes of protections under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act, including reasonable

¹⁶ 24 CFR § 5.105(a)(2); Equal Access to Housing in HUD Programs regardless of Sexual Orientation or Gender Identity, 77 FR 5662, Feb. 3, 2012

accommodation and program accessibility for persons with disabilities.

- e) A displaced family, which is a family in which each member or the sole member is a person displaced by governmental action, or whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under federal disaster relief laws.
- f) A remaining member of a tenant family where other members of the family are no longer in the unit.¹⁷

4 Income Limits

HUD establishes income limits by family size for the area in which each PHA is located. These income limits are used to determine the family's eligibility for the program and are published annually in a HUD Notice. They are generally effective on the date of publication. The income limits are available via the [HUD USER \(https://www.huduser.gov/portal/datasets/il.html\)](https://www.huduser.gov/portal/datasets/il.html) website.

To be eligible for public housing, a family must have an annual income that is no more than the low-income limit for the jurisdiction, generally 80 percent of area median income.¹⁸

4.1 Income Targeting

At least 40 percent of new admissions to public housing in the PHA fiscal year must be “extremely low-income” (ELI) families with annual incomes at or below 30 percent of the area median income. PHAs that manage both Public Housing and Section 8 voucher programs can reduce their public housing target of 40 percent of ELI admissions by exceeding the target of 75 percent of Section 8 admissions during the same PHA fiscal year, *i.e.*, the excess of Section 8 admissions may be credited against the public housing targeting requirement. The fiscal year credit for excess voucher program admissions must not exceed the lowest of:

- Ten (10) percent of public housing waiting list admissions during the PHA's fiscal year;
- Ten (10) percent of waiting list admissions to the PHA's Section 8 tenant-based assistance program during the PHA fiscal year; or
- The number of qualifying low-income families who commence occupancy during the fiscal year of PHA public housing units located in census tracts with a poverty rate of 30 percent or more.¹⁹

5 Citizenship Status

Eligibility for federal housing assistance, such as the PH program, is limited to U.S. **citizens** and **noncitizens** who have eligible immigration status.²⁰ Families in which all members are U.S. citizens or have eligible immigration status are eligible for housing assistance.²¹ Families in which at least one member is a U.S. citizen or has eligible immigration status may be eligible for partial, or pro-rated, assistance. A family in which some family members have eligible immigration status, and some do not contend eligible immigration status is

¹⁷ 24 CFR § 5.403; 24 CFR 5.105(a)(2), and the 2012 Equal Access Rule (<https://www.federalregister.gov/documents/2012/02/03/2012-2343/equal-access-to-housing-in-hud-programs-regardless-of-sexual-orientation-or-gender-identity>).

¹⁸ 24 CFR § 960.201(a)

¹⁹ 24 CFR § 960.202(b)(2)

²⁰ 24 CFR § 5.506(a)

²¹ 24 CFR § 5.506(b)

referred to as a ***mixed family***. Family members whose eligible immigration status is pending are considered ineligible for assistance until their immigration status is fully authorized by U.S. Citizenship and Immigration Services. Once these family members receive their immigration status, the family's financial assistance will be redetermined accordingly. Mixed families receive prorated assistance based on the percentage of family members who qualify for assistance.²²

An individual who is not a U.S. citizen or national who is a resident of the U.S. and has any of the following immigration statuses²³ is eligible for assistance:

- a non-citizen lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(15) and (20) of title 8, excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country (Lawful Permanent Residents (LPRs));
- a non-citizen who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 1259 of title 8;
- a non-citizen who is lawfully present in the United States pursuant to an admission under section 1157 of title 8 or pursuant to the granting of asylum (which has not been terminated) under section 1158 of title 8 (Refugees and asylees (as long as their asylum has not been terminated));
- a non-citizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 1182(d)(5) of title 8 (a noncitizen paroled into the U.S. for a period of at least one year);
- a non-citizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation pursuant to section 1231(b)(3) of title 8 (A noncitizen granted withholding of removal under 8 U.S.C. 1231(b)(3));
- a non-citizen lawfully admitted for temporary or permanent residence under section 1255a of title 8;
- a non-citizen who is lawfully residing in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the Government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia (48 U.S.C. 1901 note) and Palau (48 U.S.C. 1931 note) while the applicable section is in effect: Provided, That, within Guam any such alien shall not be entitled to a preference in receiving assistance under this Act over any United States citizen or national resident therein who is otherwise eligible for such assistance;²⁴
- a non-citizen who is a human trafficking victim and certain family members²⁵ who: (1) have a Certification Letter from the Department of Health and Human Services (including T-1 nonimmigrants

²² 24 CFR § 5.516(b)

²³ Afghan citizens and nationals paroled into the United States on or after July 31, 2021, unless parole has been terminated by the Secretary of Homeland Security, are eligible for assistance. IMPORTANT NOTE: Eligibility on this basis for HUD programs continues until March 31, 2023, or the end of the parole term, whichever is later (Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. No. 117-43, § 2502, 135 Stat. 377, 377-378 (2021).

²⁴ 42 U.S.C. § 1436a(a)

²⁵ 8 U.S.C. § 1641(c)(4); 8 U.S.C. § 1101(a)(15)(T); 22 U.S.C. § 7105(b)(1)(A); <https://www.acf.hhs.gov/orr/fact-sheet/fact-sheet-victim-assistance-english>

and Continued Presence recipients²⁶, (2) are noncitizen minors who have received a Child Eligibility Letter from the Department of Health and Human Services;²⁷ or (3) are granted derivative T nonimmigrant status by USCIS (T-2 through T-6 nonimmigrant status);²⁸ or

- a non-citizen who is a VAWA self-petitioner under 8 U.S.C. § 1101(a)(51), 8 U.S.C. § 1641(c), 62 Fed. Reg. 61344, 61367 (Nov. 17, 1997).²⁹

Non-citizen students, even those with eligible immigration status, are not eligible to receive housing assistance. When a non-citizen student is accompanied by a non-citizen spouse and/or non-citizen minor children, those family members also are ineligible for assistance. However, citizen spouses and the children of the citizen spouse and non-citizen student are eligible for assistance.³⁰ Assistance would be prorated if a household includes a non-citizen student and citizen spouse and/or citizen children. A non-citizen student is a bona fide student who:

- Is pursuing a course of study in this country;
- Has a residence in another country outside of the United States that the person has no intention of abandoning; and
- Is admitted to this country temporarily, solely for the purpose of studying.³¹

5.1 Documentation of Citizenship or Immigration Status

Each eligible family member (or the parent/guardian for family members under age 18) must sign a declaration of their status.³² Eligible noncitizens also must provide supporting documentation as shown on Exhibit 1: Non-Citizen Rule Summary of Documentation Requirements. Family members who do not sign a declaration of their status or provide the required supporting documentation will be considered ineligible noncitizens.

Documentation must be submitted no later than the date of the eligibility determination.³³ Once documents have been submitted and verified for an individual, citizenship documentation for that individual will not need to be collected again. Household members who do not provide the required proof of citizenship or eligible immigration status will be considered ineligible noncitizens.

PHA Options: Additional Documentation of U.S. Citizenship

PHAs are permitted, but not required to, adopt policies requiring additional documentation to verify U.S. citizenship. If the PHAs' policy is to require verification of citizenship, the PHAs plan must clearly state this policy. The policy must be applied consistently to all applicants and in a nondiscriminatory manner.

²⁶ See <https://www.acf.hhs.gov/otip/victim-assistance/certification>

²⁷ See <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters>

²⁸ 22 USC § 7105(b)(1)(A). Family members of individuals who are victims of a severe form of trafficking in persons that are derivative T nonimmigrants (T-2 through T-6 nonimmigrants) are immediately eligible for benefits and services to the same extent as refugees. They do not need a certification or eligibility letter from HHS.

²⁹ HUD Memorandum, Eligibility of Battered Noncitizen Self-Petitioners for Financial Assistance Under Section 214 of the Housing and Community Development Act of 1980 (Dec. 15, 2016); HUD Notice PIH 2017-02 (HA) Violence Against Women Act (VAWA) Self-Petitioner Verification Procedures

³⁰ 24 CFR § 5.522; 42 USC § 1436a(c)(2)(A)

³¹ 42 USC § 1436a(c)(2)(A)

³² 24 CFR § 5.508(c)

³³ 24 CFR § 5.508(g)(1)

5.1.1 Extensions

If the family submits the declaration of eligible immigration status and certifies that the family needs more time because the required evidence is temporarily unavailable, the PHA must provide an extension of up to 30 days to submit evidence of eligible status. To obtain an extension, the family also must certify that prompt and diligent efforts will be undertaken to obtain the evidence.³⁴

Upon determining if the extension request meets the requirements, the PHA must inform the family, in writing, whether their request for a time extension has been either granted or denied. If granted, the notice must state the specific period of the extension. If the extension request is denied, the notice must explain the reasons for the denial.³⁵

5.2 Verification of Eligible Immigration Status

The PHA is required to verify eligible immigration status through the U.S. Citizenship and Immigration Services (CIS). While the PHA may not admit any individual prior to receiving the required documentation described in Exhibit 1, the PHA may elect to provide assistance to the family prior to completing the verification process.³⁶

5.2.1 Primary Verification Method

The PHA must conduct primary verification of eligible immigration status through the CIS automated system, Systematic Alien Verification for Entitlements (SAVE).³⁷ System log-in instructions are found at: <https://SAVE://save.uscis.gov/web/>.

5.2.2 Secondary Verification Method

If the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a Section 214 covered program,³⁸ the PHA must attempt secondary verification— as of 2018, the SAVE system verification process is paperless.³⁹ The PHA must submit a request for secondary verification to CIS within 10 days of receiving results of the primary verification.⁴⁰

To request secondary verification, the PHA will forward photocopies of the original required documents with the form G-845S Document Verification Request or such other form specified by the CIS. If secondary verification fails, the PHA must notify the family in accordance with the notification requirements described in subsections 5.4.1 and 9.2 of this Chapters.⁴¹

5.2.3 CIS Appeals Process

The PHA must notify the family in writing if the secondary verification process does not confirm eligible immigration status. The notice must indicate whether assistance will be delayed, denied, or terminated and inform the family of the right to file an appeal with the CIS.⁴² HUD strongly encourages PHAs to include a copy of the verification request form (CIS FORM G-845S) with the notice.

³⁴ 24 CFR § 5.508(h)(1) - (2)

³⁵ 24 CFR § 5.508(h)(3)

³⁶ 24 CFR § 5.512(b)

³⁷ 24 CFR § 5.512(c)

³⁸ 42 U.S.C. § 1436(a)

³⁹ 24 CFR § 5.512(c)(2) and (d)(1)

⁴⁰ 24 CFR § 5.512(d)(1)

⁴¹ 24 CFR § 5.512(d)(3)

⁴² 24 CFR §§ 5.512(d)(3), 5.514(d)

If the family wants to exercise their right of appeal with the CIS, the family must submit a written request for an appeal to the CIS within 30 days of the date of the PHA’s notification.⁴³ The family also must take the following steps:

- Include with the appeal request a cover letter and any support documentation as well as a copy of the verification request form (CIS Form G-845S) which was submitted by the PHA for the secondary verification request;
- Provide the PHA with a copy of the request for appeal with the CIS and proof of mailing (e.g., US Postal Service Certified Mail, a service that provides the sender with a mailing receipt); and
- Provide any additional documentation that the CIS may request.

Within 30 days the CIS will render its decision to the family and forward a copy to the PHA (or provide notice of the reasons for any delay).⁴⁴

5.3 Prorating Assistance for Mixed Families

A mixed family is eligible for prorated assistance. “Prorated assistance” means the family will receive only a portion of the subsidy for which a fully eligible family would qualify. The proration is calculated based on the number of members who are citizens or have eligible immigration status and the total number of family members. The method of prorating assistance for Public Housing programs⁴⁵ is shown below:

Steps for Prorating Assistance for Mixed Families		Example
1	Determine the Total Tenant Payment (TTP) in accordance with 24 CFR §5.628. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)	TTP = \$300
2	Family maximum rent is equal to the applicable flat rent for the unit size to be occupied by the family.	Flat Rent= \$500
3	Subtract the TTP from the family maximum rent. The result is the maximum subsidy for which the family could qualify if all members were eligible (“Family Maximum Subsidy”).	\$500 - \$300 Family Maximum Subsidy = \$200
4	Divide the Family Maximum Subsidy by the number of persons in the family to determine the maximum subsidy per each family member who has citizenship or eligible immigration status (“Eligible Family Member”). The subsidy per eligible family member is the “Member Maximum Subsidy.”	\$200 ÷ 4 persons = Member Maximum Subsidy= \$50

⁴³ 24 CFR § 5.514(e)

⁴⁴ 24 CFR § 5.514(e)(3)

⁴⁵ 24 CFR § 5.520(d)

5	Multiply the Member Maximum Subsidy by the number of Eligible Family Members. The product of this calculation is the “Eligible Subsidy.”	$50 \times 3 =$ Eligible Subsidy = \$150
6	The Mixed Family TTP is the maximum rent minus the amount of the Eligible Subsidy.	$500 - 150 =$ Mixed Family TTP= \$350
7	Subtract any applicable utility allowance (UA) from the Mixed Family TTP. The result of this calculation is the Mixed Family Tenant Rent.	UA= \$35 $350 - 35 =$ Mixed Family Tenant Rent= \$315

5.4 Delay, Denial, Reduction or Termination of Assistance

The PHA must not delay, deny, reduce, or terminate assistance to an applicant or participant based on ineligible immigration status of a family member if any of the following circumstances apply:⁴⁶

- At least one person in the household is a U.S. citizen or an eligible noncitizen who has been verified by CIS;⁴⁷
- The family has submitted the required documents to the PHA timely, but the primary and secondary verification processes have not been completed;⁴⁸
- The family member for whom required documents have not been submitted to the PHA has moved out;⁴⁹
- The family member who is determined not to be in an eligible immigration status following the CIS verification has moved out;⁵⁰
- The CIS appeals process has not been completed;⁵¹
- Assistance is prorated in accordance with the types of preservation assistance available to mixed families;⁵²
- Assistance is prorated, and the family is not receiving assistance for the family member(s) whose eligible immigration status has not been verified;⁵³
- A deferral of termination of assistance has been granted;⁵⁴ or
- For a program participant, the informal hearing process is not complete.⁵⁵

⁴⁶ 24 CFR § 5.514(a)

⁴⁷ 24 CFR § 5.514(b)(1)(v)-(vii)

⁴⁸ 24 CFR § 5.514(b)(1)(i)

⁴⁹ 24 CFR § 5.514(b)(1)(ii)

⁵⁰ 24 CFR § 5.514(b)(1)(iv)

⁵¹ 24 CFR § 5.514(b)(1)(iv)

⁵² 24 CFR § 5.514(b)(1)(vi); see also 24 CFR §§ 5.516 and 5.518

⁵³ 24 CFR § 5.514(b)(1)(v)

⁵⁴ 24 CFR § 5.514(b)(1)(vii); see also 24 CFR §§ 5.516 and 5.518

⁵⁵ 24 CFR § 5.514(b)(2)

Assistance must be denied or terminated when:

- The family has not submitted the declaration of citizenship or eligible immigration status and appropriate documentation by the specified deadline or any extension;
- The family has submitted required documentation, but CIS primary and secondary verification do not verify eligible immigration status and the family does not pursue CIS appeal or informal hearing rights;
- The family has submitted required documentation, however CIS primary and secondary verification do not verify eligible immigration status, and the family pursues CIS appeal or informal hearing rights but decision(s) are rendered against the family; or
- The PHA determines that a family has knowingly permitted an ineligible person to live in the assisted unit on a permanent basis. In this case, the PHA must terminate assistance for the entire family for at least 24 months. This does not apply if the ineligible individual at issue was considered in calculating any proration of assistance provided for the family.⁵⁶

5.4.1 Notification of Denial Due to Citizenship Status

When a PHA denies or terminates assistance due to lack of citizenship or eligible immigration status, the PHA must send a written notice to the household which includes the following:

- A statement that financial assistance will be denied or terminated and the justification;
- Notification that the family may be eligible for prorated assistance;
- In the case of a tenant, the criteria and procedures for preserving assistance;
- The right to appeal the results of the secondary verification to the CIS and the procedures to appeal; and
- The right to request an informal hearing from the PHA in lieu of or after a CIS appeal.⁵⁷

In the case of applicants, the notice must advise that assistance may be provided until the conclusion of the CIS appeal process, however, assistance may be placed on hold until the end of the informal hearing process.⁵⁸

5.5 Compliance with Verification Requirements

Participant families are required to provide all necessary information requested by HUD and the PHA and to cooperate in efforts to verify all information provided.⁵⁹

The PHA must require all adult applicants and participants (age 18 and over, as well as heads, co-heads, and spouses, regardless of age), to sign the Authorization for the Release of Information/Privacy Act Notice (form HUD-9886) as a condition for admission and continued assistance. The form is valid for 15 months from the date of signature and must be signed at each regularly scheduled reexamination.⁶⁰

Once signed, the form provides authorization for the following:

- HUD and the PHA to obtain any information necessary from State Wage Information and Collection

⁵⁶ 24 CFR § 5.514(c)(1)

⁵⁷ 24 CFR §§ 5.512(d)(3), 5.514(d)

⁵⁸ 24 CFR § 5.514(d)

⁵⁹ 24 CFR § 960.259(a)

⁶⁰ 24 CFR § 5.230; Form HUD-9886, Authorization for the Release of Information/Privacy Act Notice

Agencies (SWICAs) to verify information provided at the time of application or recertification. This authorization includes accessing HUD's Enterprise Income Verification System (EIV);

- HUD and the PHA to verify income information with previous and current employers that is pertinent to eligibility or level of assistance;
- HUD and the PHA to obtain any financial information to determine an applicant's or participant's eligibility for assistance or level of benefits; and
- HUD to request income tax return information from the IRS and Social Security Administration (SSA) to verify income related to eligibility or level of assistance.

6 Disclosure of Social Security Numbers

The PHA must require applicants and program participants to disclose and document the Social Security Numbers (SSNs) of all family members, except ineligible noncitizens, as a condition of admission and continued assistance.⁶¹ This process occurs only one time for each family member, at time of admission and when family members are added to an assisted family, unless a family member has been issued a new SSN or the Social Security Administration (SSA) has determined that a previously disclosed SSN was invalid.

6.1 SSN Disclosure Requirements for Applicant Families

Since disclosure and documentation of SSNs is a condition of eligibility for the PH program, an applicant family cannot be admitted to the program until the requirement is met. While the PHA can provide an applicant family an extension of time to satisfy this requirement, a family's failure to timely disclose and document SSNs as required must result in the PHA's denial of the family's application.⁶²

If an applicant or occupant documents they are in satisfactory immigration status yet fails to provide a social security number based on their immigration status, their federal housing assistance must not be delayed, denied, reduced, or terminated while their immigration status is being verified and/or while their application for a social security number is pending (see subsection 5.4).

6.2 SSN Disclosure Requirements for New Household Members Added to a Participant Household

When a participating family seeks to add a new household member age 6 and above without a SSN, the family must obtain a SSN for the individual unless the family represents that the individual is not contending eligible immigration status. A participating family may not add the new household member age 6 and above to the household unless and until a SSN is disclosed and documented to the PHA.⁶³

6.2.1 New Household Members Under Age 6 Who Do Not Have an SSN

When adding a new household member who is under six years of age and who does not have an SSN (for example, when adding a newborn child to the assisted household), the participant must disclose and

⁶¹ 24 CFR § 5.216; Notice PIH 2018-24, Verification of Social Security Numbers, Social Security and Supplemental Security Income Benefits; and Effective Use of the Enterprise Income Verification System's Identity Verification Report

⁶² 24 CFR § 5.216

⁶³ 24 CFR § 5.216(a) and (e)(2)(ii)

document the SSN for the new member within 90 days of the child’s addition to the household.⁶⁴ PHAs may grant a 90-day extension if the failure to provide the information was beyond the family’s control (*i.e.*, if the delay was due to delayed processing by the Social Security Administration (SSA), a natural disaster, or a death in the family). A PHA must add the child to the assisted household pending submission of the SSN and the family must receive all associated benefits and deductions. For submissions to the Inventory Management System/Public and Indian Housing Information Center (IMS/PIC) system, PHAs must assign an “alternate ID” to the child. PHAs must later replace the alternate ID with the child’s assigned SSN.

6.3 Acceptable Documentation

PHAs must accept any of the following as acceptable evidence of a family member’s or household member’s SSN:

- A valid SSN card issued by the SSA;
- An original document issued by the SSA that shows the person’s name and SSN (SSA award letter, Medicare card, etc.); or
- An original document issued by a federal, state, or local government agency that contains the name and SSN of the individual (unemployment insurance award letter, welfare or Medicaid documents, etc).⁶⁵

A PHA must not reject these documents unless:

- The document is not an original;
- The original document appears to be altered, mutilated, or is not legible; or
- The document appears to be a forged (*i.e.*, does not appear to be authentic).⁶⁶

In this case, the PHA must explain to the family why the document is not acceptable and must request that the family provide alternative documentation within a specified timeframe. A PHA must not require an original SSN card as the only form of acceptable documentation.⁶⁷

With the exception of mixed families, the family’s failure to disclose and document SSNs shall result in a denial of assistance for applicants and termination of assistance for participants.⁶⁸

⁶⁴ 24 CFR § 5.216(e)(2)(ii)

⁶⁵ 24 CFR § 5.216(g)(1) (i)-(ii)

⁶⁶ 24 CFR §5.216(h)(3)(i); Notice PIH 2012-10, Verification of Social Security Numbers, Social Security and Supplemental Security Income Benefits; and Effective Use of the Enterprise Income Verification System’s Identity Verification Report

⁶⁷ 24 CFR § 5.216(g)(1); Notice PIH 2012-10

⁶⁸ 24 CFR § 5.218(a) and (c)

7 Tenant Screening

Determining eligibility for public housing also includes the PHA screening an applicant for suitability for tenancy. As such, a PHA may consider certain relevant aspects of an applicant's tenancy history, behaviors, financial, and criminal conviction history.⁶⁹ Each PHA's ACOP sets forth its applicant selection policies, including applicant screening. Although PHAs have discretion in setting tenant selection criteria, the established criteria must be reasonably related to individual attributes and behaviors, not to the attributes or behavior imputed to a particular group or category of persons to which an applicant may belong.⁷⁰

PHAs are to keep in mind that certain screening criteria, for example screening criteria that are based on an applicant's criminal record, are likely to disproportionately impact minority applicants. Where a screening policy has an unjustified discriminatory effect, such policy or practice is unlawful under Title VI and the Fair Housing Act. Thus, a screening policy can be unlawful even if it is not intended to be discriminatory. A housing provider must be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history (or other factor) actually assists in protecting a legitimate interest such as resident safety and/or property.⁷¹ Having clear, detailed written screening procedures that limit the use of screening criteria to those that are necessary to achieving legitimate interests such as resident safety can help the PHA apply the criteria consistently to each applicant and ensure the criteria meets HUD requirements.

In screening a family's behavior and suitability for tenancy, the PHA may consider all relevant information, which may include:

- An applicant's past performance in meeting financial obligations, especially rent;
- A record of disturbance of neighbors, destruction of property, or poor housekeeping habits at prior residences which may adversely affect the health, safety, or welfare of other tenants; and
- A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety, or welfare of other tenants.⁷²

If the PHA receives relevant unfavorable information regarding any screening criteria, the PHA must consider the time, nature and extent of the applicant's conduct, including the seriousness of the offense.⁷³ The PHA also may consider whether excluding a particular member of the applicant's household with the unfavorable information and allowing the remaining members to be admitted would resolve the PHA's concerns.⁷⁴ Additionally, the PHA may identify in their policies how, when and under what circumstances mitigating factors will be considered. For example, a willingness to participate in counseling or other social services, may indicate a likely favorable change in future conduct. Regarding all screening criteria, PHAs may only consider information that is accurate and that is relevant to predicting an applicant's likely future behavior as a tenant. Arrest records do not constitute proof of past unlawful conduct and are often incomplete (e.g., by failing to indicate whether the individual was prosecuted, convicted, or acquitted).⁷⁵ Likewise, records from eviction or

⁶⁹ 24 CFR § 960.203(c)

⁷⁰ 24 CFR § 960.203(a)

⁷¹ 24 CFR 100.500 (providing that a policy or practice violates the Fair Housing Act if it has a discriminatory effect and is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect); 24 C.F.R. 1.4(b)(2)(i) (providing that practices with an unjustified discriminatory effect violate Title VI).

⁷² 24 CFR § 960.203(c)(1)-(3)

⁷³ 24 CFR § 960.203(d)

⁷⁴ 24 CFR § 960.203(c)(3)(i)

⁷⁵ See Notice PIH-2015-19

related cases in which the tenant prevailed or that were settled without either party admitting fault do not necessarily demonstrate a poor tenant history, or extenuating circumstances may explain why a past eviction is not indicative of an applicant's future conduct (e.g., if an eviction was due to unexpected medical or emergency expenses, or a negative reference reflected bias).

In all instances, tenant selection criteria are subject to the nondiscrimination and equal opportunity provisions of 24 CFR 5.105, which includes the Fair Housing Act and Title VI and their implementing regulations prohibiting practices with an unjustified discriminatory effect, and the provisions for the protection for victims of domestic violence, dating violence, sexual assault or stalking at 24 CFR part 5, Subpart L.⁷⁶

In cases of requests for emergency transfers under VAWA, with the written consent of the victim of domestic violence, dating violence, sexual assault, or stalking, the receiving PHA may accept and use the prior covered housing provider's determination of eligibility and tenant screening and all related verification information.

7.1 Criminal Background Screening

HUD encourages PHAs to seek policies that strike a balance between resident safety and the reentry needs of formerly incarcerated individuals and others with criminal histories. PHA policies must comply with federal nondiscrimination statutes, which may include an individualized assessment of a person's criminal record and reentry needs. PHAs are encouraged to consider options for providing housing access to persons with conviction histories as appropriate and defined in the PHAs' ACOP. PHAs may admit persons with criminal conviction records outside of those who are subject to a lifetime sex offender registry and those who have been convicted of manufacturing methamphetamine on the premises of federally subsidized housing. PHAs may consider conviction records because other criminal records, such as arrest records, are not actually evidence of unlawful conduct and are often incomplete. PHAs must set admission policies for their public housing programs consistent with both program and federal fair housing and civil rights requirements.⁷⁷ HUD encourages PHAs to consider other factors such as evidence of rehabilitation or participation in social service programs before any denial.⁷⁸

7.1.1 Consent for Background Screening

Criminal background checks to screen for whether an applicant is subject to a lifetime sex offender registry must be performed in the state in which the housing is located and for states where the applicant and members of the applicant's household may have resided, unless the PHA uses a national database such as the Dru Sjodin database to search for such information.⁷⁹ PHAs must ask adult applicants to provide all of the states in which they have lived and whether their name appears on any sex offender registry or the PHA could use a national database such as the Dru Sjodin database to search for such information. Failure of applicants to disclose this information is cause for denial.⁸⁰

⁷⁶ 24 CFR §§ 5.105, 960.203(c)(4)

⁷⁷ See Notice PIH-2015-19

⁷⁸ 24 CFR § 960.203(d)(1)(ii); see also April 4, 2016 Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions.

⁷⁹ Notice PIH-2012-28

⁸⁰ Notice PIH-2012-28

To access an individual's criminal conviction record, each adult household member must sign a consent form for the release of criminal conviction records by law enforcement agencies.⁸¹ Any fees law enforcement agencies may charge for providing the records to the PHA must not be passed along to the applicant family.⁸²

7.1.2 Information from Drug Abuse Treatment Facilities

PHAs may deny admission to household members that are currently engaging in the use of illegal use of a controlled substance. Information obtained that shows past use of substance abuse or alcoholism is not grounds for denying admissions.⁸³

PHAs may require each person who applies for admission to sign one or more forms of written consent authorizing the agency to receive information from a drug treatment facility to ascertain whether the applicant is currently engaging in the use of illegal use of a controlled substance.⁸⁴ However, if the PHA chooses to seek this information, it must follow specific requirements set forth in HUD's regulations.⁸⁵

7.1.3 Records Retention and Confidentiality

Because there are strict penalties for improper disclosure of criminal conviction records, the PHA must establish procedures aimed at maintaining confidentiality.⁸⁶ Criminal records must be maintained confidentially and may only be disclosed to persons within the PHA with a job-related need to know the contents.⁸⁷

Criminal background records, including sex offender registration information must be destroyed promptly once the purpose has been served. For example, if the PHA decides to admit the family to the PH program, the records must be destroyed immediately. If the PHA decides to deny admission based on a criminal conviction record, the record may be retained during the period allowed for requesting an informal review, and until the review, if requested, has been completed. The record must then be destroyed promptly. The PHA must not retain criminal conviction records for longer periods, even if the records are stored separately from the family's file.⁸⁸

In addition, any information an individual submits regarding medical or other information to support an individual's reasonable accommodation request, including reasonable accommodation requests related to a PHA's decision to deny admission based on a criminal record, must be kept confidential. Additionally, if the individual has represented that they are a victim of domestic violence, dating violence, sexual assault, or stalking while invoking rights under VAWA, any information they submit must be kept strictly confidential.⁸⁹

⁸¹ 24 CFR § 5.903(b)(1)

⁸² Notice PIH-2009-39, Prohibition on Public Housing Agencies Charging Application Fees

⁸³ 24 CFR § 960.204(a)(2)

⁸⁴ 24 CFR § 960.205

⁸⁵ 24 CFR § 960.205

⁸⁶ 24 CFR §§ 5.903(g)(3), 5.905(c)(1)(iii)

⁸⁷ 24 CFR §§ 5.905(c)(1)(i) (ii) § 5.903(g)(1) and (2)

⁸⁸ 24 CFR §§ 5.905(c)(1)(iii), 5.903(g)(3)

⁸⁹ 24 CFR § 5.2007(c)

PHA Options: Considerations for Screening Policies

The minimum requirements for criminal background screenings and denial of assistance are outlined in this chapter. HUD has issued guidance encouraging PHAs to strike a balance between resident safety and the reentry needs of formerly incarcerated individuals and others with criminal history records. PHAs have broad discretion in setting their admission policies. PHAs' policies must comply with federal nondiscrimination statutes, which may include an individualized assessment of a person's criminal record and reentry needs. HUD encourages PHAs to allow individuals released from incarceration to rejoin their families when appropriate, and to obtain housing if they meet all other admission requirements. PHAs are also encouraged to consider other factors in their decisions such as rehabilitation and participation in social service programs.

Related Resources:

[*It Starts with Housing: Public Housing Agencies are Making Second Chances Real*](#)

[*PIH Notice 2015-19: Guidance for Public Housing Agencies \(PHAs\) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*](#)

[*FAQs: Excluding the Use of Arrest Records in Housing Decisions*](#)

[*Letter from Marcia Fudge, Secretary, United States Department of Housing and Urban Development, to PHAs, June 23, 2021*](#)

7.1.4 Denial of Assistance for Criminal Activity

PHA policies must ensure that adverse housing decisions based upon criminal activity are supported by sufficient evidence that the individual engaged in such activity. Specifically, before a PHA denies admission to, terminates the assistance of, or evicts an individual or household on the basis of criminal activity by a household member or guest, they must determine that the relevant individual engaged in such activity.⁹⁰ PHAs are prohibited from denying admission or terminating assistance solely based on arrest records.⁹¹ Prior to evicting a tenant because of a guest's criminal activity, the PHA may consider whether the tenant was aware of the criminal activity or evidence that the guest is unlikely to return to the property. A tenant in a housing program covered by VAWA may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if the criminal activity is engaged in by a member of the household, a guest, or a person under the control of the tenant and the tenant or an affiliated individual⁹² of the tenant is the victim or threatened victim.⁹³

If the PHA decides to deny admission based on a criminal conviction record, the PHA must notify the family of the proposed action and must give the family an opportunity to dispute the accuracy and/or relevance of the record.⁹⁴ A copy of the criminal conviction record must be provided to the head of household and to the subject of the record (if not the head of household). If the family does not dispute the record, or if the family disputes the record but the PHA rejects the families' dispute, a denial notice must be sent. The notification of

⁹⁰ 24 CFR §§ 5.852(e), 5.861; 960.202(c)(3), 966.6(l)(5)(vii)(F)

⁹¹ Notice PIH-2015-19, Guidance for Public Housing Agencies and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions

⁹² 24 CFR § 5.2003

⁹³ 24 CFR § 5.2005(b)(2)

⁹⁴ 24 CFR § 5.903(f); § 5.905(d); § 960.204(c)

a proposed action on the basis of a criminal record is a regulatory requirement and is separate from the PHA's informal review procedures.

PHAs must deny admission when:

1. Any household member has been convicted of manufacturing methamphetamines on the premises of federally assisted housing.
2. Any household member is subject to a lifetime sex offender registration requirement.
 - The PHA must check for sex offender registration in its own state and in any other state where the family has resided. Use of a nationwide database such as www.nsopw.org is recommended to conduct this required check.
3. The PHA determines that a household member is currently engaging in illegal drug use.
4. The PHA has reasonable cause to believe that other tenants' health, safety or right to peaceful enjoyment may be threatened by a household member's:
 - Illegal drug use or pattern of illegal drug use, or
 - Abuse or pattern of abuse of alcohol.
5. A household member has been evicted from federally assisted housing within the last three years for drug-related criminal activity.

The PHA may admit the family, however, if it determines that the household member who engaged in the activity has successfully completed a supervised rehabilitation program, or the circumstances no longer exist (for example, the household member has died or is imprisoned).⁹⁵

The term "admission" includes and applies to a person seeking to become a new member of an already-existing household. For example, PHAs must prohibit a person subject to a lifetime sex offender registration requirement from becoming a new member of an already-existing household (e.g., being added to an already-existing lease). Such addition to the existing household would constitute a new "admission" for the added individual.⁹⁶

Mandatory and discretionary denials of admission for criminal activity or drug abuse are summarized below.

⁹⁵ 24 CFR § 960.204(a) and (b); Notice PIH-2012-28

⁹⁶ Certain of the guidance herein – such as the foregoing guidance regarding admission of a new member to an already-existing household – applies to all federally assisted housing, not just to the Public Housing program. See, e.g., 42 U.S.C. § 13663(a).

Type of Criminal Activity or Offense/Drug Abuse	Action
Convicted of producing methamphetamine on the premises of federally assisted housing	Mandatory denial. ⁹⁷
Subject to a lifetime registration requirement under a State sex offender program	Mandatory denial. ⁹⁸
Determined to be currently engaging in illegal use of a controlled substance	Mandatory denial
Reasonable cause to believe that illegal use or pattern of illegal use of a controlled substance or abuse or pattern of abuse of alcohol may interfere with the health, safety or right to peaceful enjoyment of the premises by other residents	Mandatory denial
Evicted from federally assisted housing for drug-related criminal activity within the last three years, UNLESS <ul style="list-style-type: none"> The circumstances leading to the eviction no longer exist, or The evicted household member has successfully completed an approved supervised drug rehabilitation program 	Mandatory 3-year denial on admission, except if specified conditions are met then PHA may exercise discretion
History of drug-related criminal activity	Discretionary denial
History of violent criminal activity	Discretionary denial
History of criminal activity that adversely affects the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, persons residing in the immediate vicinity of the premises, or public housing agency employees	Discretionary denial

8 EIV System Searches at Admission

The Enterprise Income Verification (EIV) System is a web-based application, which provides PHAs with employment, wage, unemployment compensation and social security benefit information for tenants who participate in the Public Housing and various Section 8 programs under the jurisdiction of the Office of Public and Indian Housing. This system is available to all PHAs nationwide. Information in EIV is derived from computer matching programs initiated by HUD with the SSA and the U.S. Department of Health and Human Services, for all program participants with valid personal identifying information (name, date of birth (DOB), and SSN) reported on the form HUD-50058.

⁹⁷ This ban is, of course, not permanent if the conviction that forms its basis is reversed following a successful appeal and the applicant reapplies.

⁹⁸ If an individual successfully appeals the lifetime registration requirement and reapplies following the successful appeal, the offender is not barred at the time of the reapplication because the individual is no longer subject to a lifetime registration requirement. See "State Registered Lifetime Sex Offenders in the Housing Choice Voucher and Public Housing Programs FAQ" at 2.

8.1 Existing Tenant Search and Avoiding Duplicate Subsidy

Prior to admission into the program, the PHA must search for each family member in the EIV Existing Tenant Search. The search will show if any family member is currently assisted by another public housing agency.⁹⁹

8.2 HUD-52675 Debts Owed to PHAs and Terminations

Prior to admission to the program, the PHA must search for each adult family member in the EIV Debts Owed to PHAs and Terminations database.¹⁰⁰ All adult household members must sign the form HUD-52675 once at admission.¹⁰¹ The form provides notification to adult household members that debt and terminations information will be collected, shared with other PHAs and will be accessible by HUD staff, PHA staff, and contractors to determine suitability for rental assistance. The Debts Owed to PHAs & Termination Report may be generated in EIV as a standalone report; the information from the report also is contained in the Income Report for each household.¹⁰²

If any information on debts or terminations is returned by the search, the PHA will determine if the offenses violate their respective admissions policies. The family has a right to request and obtain a copy of the report from the PHA and dispute the reported information, providing any supporting documentation. To ensure the availability of records, disputes of the original debt or termination information must be made within three years from the end of participation date, unless a reasonable accommodation to this policy is made; otherwise the debt and termination information will be presumed correct. Only the PHA who reported the adverse information can delete or correct the record. The PHA has 30 days from receipt of the written dispute to provide notification of its action—either to update or delete the record if the PHA determines the information is incorrect or to provide an explanation as to why the information is correct.¹⁰³

8.3 120-day review of Income Report

Income information is typically not available in EIV for applicant families. If information is not available at the time of income determination, the PHA must review the family's EIV Income Report 120 days after the New Admission (action code 1) is processed to identify any unreported or underreported income sources.¹⁰⁴

9 Notifications to Family

9.1 Emergency Contact

The PHA must notify the family of their right to provide an emergency contact and give the family an opportunity to provide the emergency contact.¹⁰⁵ PHAs may use form HUD-92006 to meet this requirement, however the family is not required to provide emergency contact information.

⁹⁹ Notice PIH-2018-18, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System

¹⁰⁰ Notice PIH-2017-12, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System; form HUD-52675 Debts Owed to Public Housing Agencies and Terminations

¹⁰¹ Notice PIH-2017-12

¹⁰² Notice PIH-2017-12

¹⁰³ Form HUD-52675

¹⁰⁴ Notice PIH-2017-12

¹⁰⁵ Section 644 of the Housing and Community Development Act of 1992, Public Law 102-550

9.2 Notification Requirements

At the time an application is filed, the PHA must notify all applicants for assistance about the rule restricting assistance based on citizenship or immigration status and of the requirement to submit documentation of eligible status or to elect not to claim eligible status.¹⁰⁶ See section 5.4.1 of this Chapter for further detail.

9.3 Effective Communication and Limited English Proficiency Requirements

PHAs must ensure effective communication with individuals with disabilities, to include providing all notifications and communications in accessible formats. PHAs must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed, e.g., Braille, audio, large type, assistive listening devices, and sign language interpreters.¹⁰⁷ PHAs must also take reasonable steps to ensure meaningful access to their programs and activities to individuals with limited English proficiency. See HUD's Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) (72 FR 2732). This may entail the PHA providing information in translated formats, or other language assistance services. LEP guidance and LEP information is available on HUD's website.

10 Denial of Assistance

The information in this section applies generally to all denials of assistance. The factors used in determining denials of assistance include timing of denials, non-discrimination, and consideration of circumstances.

10.1 Timing of Denial

An applicant may be denied assistance under the public housing program only for violations of the program requirements that are identified as grounds for denial of assistance.¹⁰⁸ The PHA must promptly notify any applicant determined to be ineligible for admission to a project, and must provide the applicant upon request, within a reasonable time after the determination is made, an opportunity for an informal hearing on the denial.¹⁰⁹

10.1.1 Notice and Right to Dispute Denial

PHAs must send a formal notice of denial to an applicant who is denied admission.¹¹⁰ The notice can be drafted to address both denials for eligibility and screening on the same form. If the household is denied because of criminal activity, the notice would include language that offers the applicant and the person to whom the criminal record applies (if different) a copy of the criminal records and an opportunity to dispute the accuracy and relevance of the record.¹¹¹ In addition, the denial letter should:

- Clearly state the reason for the denial

¹⁰⁶ 24 CFR § 5.508(f)(1)

¹⁰⁷ See 24 CFR § 8.6 and 28 CFR 35.160

¹⁰⁸ 24 CFR § 960.203(a)

¹⁰⁹ 24 CFR § 960.208(a)

¹¹⁰ 24 CFR § 960.208(a)

¹¹¹ 24 CFR § 960.204(c)

- State the time period and process for requesting an informal hearing and
- Provide notice to the applicant that a person with a disability has the opportunity to request a reasonable accommodation
- Provide notice of the mandatory VAWA Notice of Occupancy Rights, along with form HUD-5382.¹¹²

The informal hearing for denied applicants is not a Grievance Hearing.¹¹³ The purpose of the hearing is to permit the applicant to hear the details of the reasons for denial, present evidence to the contrary if available, and claim mitigating circumstances when possible. The person who made the original decision to deny, or a subordinate of that person, may not conduct the hearing. A written record of the hearing decision should be mailed to the applicant and placed in the applicant's file. If the hearing decision overturns the denial, processing for admission should resume.

10.2 Non-discrimination

All decisions to deny assistance are subject to civil rights and antidiscrimination laws such as the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 (ADA), and must comply with the nondiscrimination and equal opportunity provisions of 24 CFR 5.105(a). Requirements under the Violence Against Women Act (VAWA) and 24 CFR part 5, Subpart L also apply. The PHA must not deny admission solely based on certain family characteristics, including families with children, single-parent families, families with parents who are not married, or families with children born to such parents, families that receive public assistance, or whether the family decides to participate in the Family Self-sufficiency (FSS) program. The PHA is prohibited from denying admission on the basis of any protected class, including age, race, color, religion, sex (including sexual orientation and gender identity), national origin, familial status, and disability. Consistent with HUD's Equal Access Rule, HUD-assisted and HUD-insured housing must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.¹¹⁴

For households with a household member with a disability, a PHA must grant a reasonable accommodation request made by an applicant unless it constitutes an undue financial and administrative burden, is a fundamental alteration to the program, or results in a direct threat that cannot be reduced or eliminated, including by granting another reasonable accommodation. This includes, for example, a reasonable accommodation request made by an applicant who was denied admission due to criminal activity or a previous eviction from housing assisted under the program for serious violation of the lease where the tenant claims that the criminal activity, eviction or lease violation was related to that tenant's disability. More information on reasonable accommodations and fair housing requirements can be found in the Fair Housing and Nondiscrimination Requirements Chapter.

If an applicant is otherwise eligible, admission to the program may not be denied to the program on the basis or as a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.¹¹⁵ PHAs must notify applicants that protections are available to victims under the

¹¹² Notice PIH-2017-08

¹¹³ 24 CFR § 966.51(a)(1); Only PHA residents are entitled to Grievance Hearings

¹¹⁴ 24 CFR § 5.105(a); Notice PIH-2014-20: Program Eligibility Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD's Equal Access Rule

¹¹⁵ 24 CFR § 5.2005(b)

Violence Against Women Act (VAWA), as reauthorized, and 24 CFR part 5, Subpart L.¹¹⁶ More information is available in PIH's VAWA Notice.¹¹⁷

10.3 Consideration of Circumstances

In deciding whether to deny assistance because of unfavorable actions by members of the family, PHAs have discretion to consider the circumstances in each particular case and may be required to do so in certain circumstances by fair housing and civil rights laws. Circumstances could include, for example, the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure to act.¹¹⁸ Also, the PHA may offer the family the opportunity to remove the ineligible family member from the application to become eligible in certain circumstances.¹¹⁹

The PHA's admission actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105, and with the requirements of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).¹²⁰

¹¹⁶ 24 CFR § 5.2005; Violence Against Women Reauthorization Act of 2013 (P.L. 113-4)

¹¹⁷ Notice PIH-2017-08.

¹¹⁸ 24 CFR § 960.203(c), (d)

¹¹⁹ 24 CFR §§ 5.825(b), 960.203(c)(3)(i).

¹²⁰ 24 CFR § 960.203(c)(4)

Exhibit 1: Non-Citizen Rule Summary of Documentation Requirements

STATUS	DOCUMENTATION Note: Expired documents are not an acceptable form of verification
1) A citizen or national of the United States	<p>DECLARATION: For each family member with this status, a declaration of citizenship, signed under penalty of perjury is required.</p> <p>For each adult household member over age 18, the declaration must be signed by the adult. For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.</p>
2) A non-citizen claiming eligible immigration status who is 62 years of age or older per 24 CFR § 5.508(b)(2).	A Declaration AND: Proof of age
<p>3) All other non-citizens claiming eligible immigration status.</p> <p>Categories of eligible immigration status:</p> <p>a) a non-citizen lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(15) and (20) of title 8, excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country;</p> <p>b) a non-citizen who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 1259 of title 8;</p>	<p>DECLARATION: For each family member with this status, a declaration of eligible immigration status signed under penalty of perjury is required.</p> <p>Adults must sign their own declaration</p> <p>AND:</p> <p><u>A verification form</u>: For each adult, the adult must sign the form. For each child, an adult member of the family residing in the unit who is responsible for the child must sign the form.</p> <p>The verification form must state that evidence of eligible immigration status may be released by the PHA to HUD and the CIS without responsibility for the future use or transmission of the evidence by the recipient. The form must also notify the signer of the possible release of evidence of eligible immigration status by HUD. Such evidence shall only be released by HUD to the CIS for the purpose of establishing eligibility for financial assistance.</p> <p>AND:</p> <p><u>CIS Primary Verification</u> of eligible immigration status must be conducted by the PHA through the CIS automated SAVE system. If this method fails to verify status, or, if the verification received indicates ineligible immigration status, the PHA must request <u>Secondary CIS Verification</u> within 10 days by sending to the local CIS Office photocopies of CIS documents receiving (front and back) attached to Form G-845S – Document Verification Request.</p> <p>AND:</p> <p>The PHA must request and review an original CIS document of eligible immigration status and must retain photocopies and return the original to the individual.</p>

STATUS	DOCUMENTATION Note: Expired documents are not an acceptable form of verification
<p>c) a non-citizen who is lawfully present in the United States pursuant to an admission under section 1157 of title 8 or pursuant to the granting of asylum (which has not been terminated) under section 1158 of title 8;</p> <p>d) a non-citizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 1182(d)(5) of title 8;</p> <p>e) a non-citizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation pursuant to section 1231(b)(3) of title 8;</p> <p>f) a non-citizen lawfully admitted for temporary or permanent residence under section 1255a of title 8;</p> <p>g) a non-citizen who is lawfully residing in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the Government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia (48 U.S.C. 1901 note) and Palau (48 U.S.C. 1931 note) while the applicable section is in effect: Provided, That, within Guam any such alien shall not be entitled to a preference in receiving assistance under this Act over any United States citizen or national resident therein who is otherwise eligible for such assistance;</p> <p>h) a non-citizen who is a human trafficking victim and certain family members who: (1) have a Certification Letter from the Department of Health and Human Services (including T-1 nonimmigrants and Continued Presence recipients), (2) are noncitizen minors who have received a Child Eligibility Letter from the Department of Health and Human Services; or (3) are granted derivative T nonimmigrant status by USCIS (T-2 through T-6 nonimmigrant status);</p> <p>i) a non-citizen who is a VAWA self-petitioner under 8 U.S.C. § 1101(a)(51), 8 U.S.C. § 1641(c), 62 Fed. Reg. 61344, 61367 (Nov. 17, 1997).</p>	<p>Acceptable Original CIS Document:</p> <ul style="list-style-type: none"> • Form I-551 "Permanent Resident Card" • Form I-94 Arrival-Departure Record annotated with one of the following: <ul style="list-style-type: none"> - "Admitted as a Refugee Pursuant to Section 207" - "Section 208" or "Asylum" - "Section 243(h)" or "Deportation stayed by Attorney General" - "Paroled Pursuant to 9 CFR Section 221 (d)(5) of the INS" • Form I-94 Arrival-Departure Record with no annotation accompanied by: <ul style="list-style-type: none"> - A final court decision granting asylum (but only if no appeal is taken); - A letter from a DHS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a DHS district director granting asylum (application filed before 10/1/90); - A court decision granting withholding of deportation; or - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90). • Form I-9 Employment Eligibility Verification annotated with: <ul style="list-style-type: none"> - Acceptable document from List A or, - Combination of one selection from List B and one selection from List C • A receipt issued by the DHS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant's entitlement to the document has been verified; or • Other acceptable evidence. If other documents are determined by the DHS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i>.